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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re MICHAEL R., a Person Coming
Under the Juvenile Court Law.

B241826
(Los Angeles County Super. Ct.
No. CK55072)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CAROLYN L.,

Defendant and Appellant.

APPEAL from the orders of the Superior Court of Los Angeles County, Sherri Sobel, Juvenile Court Referee. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

Carolyn L. (mother) appeals from a June 6, 2012 dependency court order terminating parental rights to her son, Michael, under Welfare and Institutions Code¹ section 366.26. She contends the order must be reversed because the dependency court omitted to make required findings under the Indian Child Welfare Act of 1978 (the ICWA) (92 Stat. 3069, 25 U.S.C. §§ 1901-1963). As mother failed to object in the trial court, she forfeited her contention, and we decline to review it. Accordingly, we affirm the order.

Michael was born in June 2011 with drugs in his system to mother, who had a 20-year history of substance abuse and criminal convictions. He was mother's ninth child. She received no prenatal care and used methamphetamine throughout the pregnancy. All eight siblings were in permanent placement or adopted.

Michael was declared a dependent of the court on October 5, 2011, and was removed from parental custody. The Comanche tribe stated Michael was eligible for enrollment in the tribe (mother was an enrolled member). The tribe intervened in the proceedings to monitor the case.

The dependency court found Michael was an Indian child and proceeded in accordance with the requirements of the ICWA. The court found, under the ICWA, that active efforts were provided to prevent or eliminate the breakup of the Indian family. Mother failed to reunify with Michael, who was placed in the prospective adoptive home that had adopted four of his siblings. On June 6, 2012, after considering the tribal expert's ICWA declaration,² the dependency court terminated parental rights.

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

² The tribe supported termination of parental rights. The tribe's expert witness stated: "That conducts of the parent, demonstrated by chemical dependency, failed treatment, inability to maintain sobriety, inability to maintain safe and stable housing, involvement in domestic violence, and failure to protect the child from abuse has resulted in child-raising practices which are unacceptable in the Indian community."

Mother contends the order terminating parental rights should be reversed because the dependency court failed to make a finding by clear and convincing evidence that active efforts were made to prevent the breakup of the Indian family³ and a finding beyond a reasonable doubt based on evidence from a qualified expert that continued custody was likely to result in serious harm to the child.⁴ Respondent contends mother forfeited the contentions by failing to object on those grounds in the court below. Respondent is correct.

At the termination hearing, mother did not object to the dependency court's findings or assert required findings were not made. Normally, objections not made in the trial court are forfeited. (E.g., *In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted [“a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected.”].) Even constitutional rights may be forfeited ““by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.”” [Citations.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 880-881.) The forfeiture

[¶] That continued custody of Michael R. by the parents is likely to cause serious emotional and or physical damage to them. [¶] That the placement of the child in a culturally appropriate foster, pending placement with relatives, is consistent with the order of preference under the Indian Child Welfare Act. [¶] That appropriate services were provided to the family to prevent placement out of the home.”

³ Title 25 United States Code, section 1912, subdivision (d) provides: “Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”

⁴ Title 25 United States Code, section 1912, subdivision (f) provides: “No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” (See also § 224.6, subd. (b).)

rule applies to rights under the ICWA. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 411-412 [objections to standard of proof and lack of compliance with the expert witness requirement in the ICWA were forfeited].)

Mother's contention, citing California Rules of Court, rule 5.484(a) (hereinafter "court rule 5.484(a)"), that the ICWA's requirements cannot be waived without a written stipulation, is mistaken. Court rule 5.484(a) provides in pertinent part: "(2) . . . [A] failure to object[] may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the person or tribe [who failed to object] has been fully advised of the requirements of the Indian Child Welfare Act and has knowingly, intelligently, and voluntarily waived them. Any such stipulation must be agreed to in writing." There is no contention in this appeal that there was a failure to comply with a requirement of producing evidence. The contention is that the dependency court failed to make findings. That contention is not within the ambit of court rule 5.484(a)'s provision barring forfeiture absent a knowing, signed waiver.

In dependency cases, discretion to consider forfeited claims "must be exercised with special care." (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293.) "[T]he appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue." (*Ibid.* [the forfeited issue involved interpretation of a statute and had divided the courts of appeal]; *In re M.R.* (2005) 132 Cal.App.4th 269, 272 [the forfeiture was excused in order to clarify a recent statutory amendment].) This is not the rare case involving the type of legal issue that compels overlooking the forfeiture.

DISPOSITION

The orders are affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.